IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 564 of 1999

For Approval and Signature:

HON'BLE MR.JUSTICE C.K.BUCH

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

STATE OF GUJARAT ON BEHLAF OF K V DABHI

Versus

DIPAKKUMAR CHIMANLAL SHAH

Appearance:

1. Criminal Appeal No. 564 of 1999

MR IM PANDYA, APP for Petitioner No. 1

MR DK MODI for Respondent No. 1

MR MD MODI for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE C.K.BUCH

Date of decision: 11/03/2004

ORAL JUDGEMENT

1. This is an appeal under Sec. 378(1)(3) of Criminal Procedure Code, 1973 filed by the appellant

State of Gujarat on behalf of original complainant Mr. K.V.Dabhi, Food Inspector working in the Office of the Deputy Director, Civil Supplies Department, Sachivalaya, Gandhinagar challenging the impugned judgment and order of acquittal dated 3.3.1999 passed by ld. Metropolitan Magistrate, Court No.8, Ahmedabad in Criminal Case No.20/97 whereby the ld. Magistrate has acquitted the respondent accused of the offence punishable under Section 7 R/w Section 16(1)A(i) of the Prevention of Food Adulteration Act, 1954 (hereinafter referred to as the PFA Act).

2. It is the case of prosecution that complainant Mr. K.V. Dabhi, in exercise of his powers and duties, in the local area, drew samples of edible oil viz. groundnut oil from the firm being run in the name and style of Zalak Enterprise. Respondent accused Dipakkumar Chimanlal Shah is the owner of the said firm which has been engaged in Tinning process of groundnut oil brought to the firm in bulk. From the stock lying with the accused and the firm, samples of groundnut oil were drawn by the complainant Mr. Dabhi on 24.12.1996 at about 4.00 P.M. in presence of one panch named Kanubhai Natubhai. It is the say of the prosecution that process of drawing sample and sending the same for analysis has been done in accordance with the provisions of the Act and Rules framed thereunder. Public Analyst, on analysis found that groundnut oil is adulterated and not as per the standard prescribed and, therefore, a complaint came to be filed in the Court of ld. Metropolitan Magistrate, Ahmedabad and accused was informed by statutory notice and intimation under Sec.13(2) of the PFA Act. It is specifically averred by the prosecution that while drawing samples, mandatory provisions under the PFA Act & Rules framed thereunder, have been complied with.

3. Ld. Magistrate has recorded oral as well as documentary evidence led by the prosecution and by defence side and after hearing ld. advocates appearing for the parties, held that the prosecution has failed to establish the guilt beyond doubt and that there is violation of mandatory provisions inasmuch as provisions of sec.13(2) of the PFA Act and Rule 14 of the Rules framed thereunder have not been complied with and, therefore, the accused can not be held guilty and, therefore, vide impugned judgment, acquitted the respondent accused against which the State has filed present acquittal appeal.

4. Mr. I.M.Pandya, ld. APP appearing for the State has taken me through various grounds mentioned in the

memo of appeal, but he has mainly concentrated on two points and it is argued by ld. APP Mr. Pandya that the ld. Magistrate has committed gross error in holding that mandatory provisions of Sec.13(2) of the PFA Act have not been complied with and there is no legal evidence to show that notice was served to the accused Dipakkumar as mentioned in the complaint. Panch Kanubhai has turned hostile, but as per oral evidence led by the complainant, ld. Magistrate ought to have held that samples were drawn in accordance with law and utensils used for drawing samples were perfectly clean and, therefore, there was no scope to cause any prejudice to the accused. Mr. Pandya has taken me through oral as well as documentary evidence and mainly documents at exh.21, 22 & 23 and oral say of the complainant while tendering above-said three documents in evidence.

5. Exh.21 is the notice under Sec.13(2) of the PFA Act. On perusal thereof, it appears that there is no specific date shown at the place where it is required to be mentioned and this very notice has not been signed by the complainant also. The officer who has signed the notice has not been examined by the prosecution. The designation of the officer who has signed the notice is Deputy Director, Local Health Authority, but there is no evidence to show that this very authority or person subordinate to this authority had ever dispatched the notice to the accused as alleged in the complaint. Exh.23 which according to the prosecution is the document showing service of notice, is nothing but an acknowledgment slip of Regd.A.D.Post sent at the address of the accused. It bears rubber stamp of altogether a different authority. It mentions Commissioner, Food & Drugs Control Administration, Block No.8, Dr. Jivraj Mehta Bhavan, Gandhinagar.The Office of Food Inspector Mr. Dabhi seems to be in a different building i.e. 14/5 New Sachivalaya, Gandhinagar. It is accepted during the course of cross-examination by Mr. Dabhi that he is not aware about the exact dispatch of notice under Sec.13(2) of the PFA Act or service of it and he was not able to identify the signature of the person- recipient of the envelope sent at the address of the accused. It is true that reasonable inference can be drawn or it can be presumed that a Regd. Letter with acknowledgment slip was dispatched from Gandhinagar and it had reached to the address on or about 12.4.1997 and office of the Commissioner, Food & Drugs Control Administration, Gandhinagar had received acknowledgment on or about 17.4.1997, but it is rightly appreciated and observed in absence of production of a window receipt or the other direct evidence on behalf of the prosecution, that notice under Sec.13(2) of PFA Act was dispatched with Report of

Public Analyst to the accused with Regd.A.D. Slip exh.23, should not be accepted as cogent, legal evidence for service of notice under Sec.13(2) of the PFA Act.

6. It is argued by ld. counsel Mr. Modi appearing for the accused that in absence of window receipt and other oral evidence, it can not be legally inferred or assumed that the Commissioner had sent notice under Sec.13(2) of the PFA Act from his offence though the same has been signed by Deputy Commissioner (Food & Local Health Authority) working under him. Food Inspector had stated that after drawing sample, necessary papers including panchanama and all the three samples were handed over to the Local Health Authority and other formalities were to be undertaken by the authority. It is the privilege of the accused to get the second sample examined through Central Food Laboratory (CFL for short) and unless he is put to the notice about the finding recorded by the Public Analyst with notice under Sec.13(2) of the PFA Act, it is not possible for him to exercise that right. So, insufficiency of evidence as to service of such notice would prejudice the case of the prosecution because the resultant effect would be that accused would be deprived of the statutory right conferred under the Statute to get the sample examined through CFL.

7. The finding recorded by ld. Magistrate is mainly based on certain admissions made by the complainant himself. At one place, in the order ld. Magistrate has observed that the complainant has stated that he has not sent the notice to accused provided under Sec.13(2) of the PFA Act but it was sent by Local Health Authority, State of Gujarat, Gandhinagar. When nobody from the office of Local Health Authority, Gandhinagar proves the fact that notice was sent as mentioned in the complaint with a copy of the finding recorded by the Public Analyst, it would not be either legal or proper for any Court to say that evidence led by the prosecution is sufficient in this regard. Ld. Judge has carefully considered rubber stamps used and the fact that there is no evidence on record to show that it was received by the accused Dipakkumar. During the course of drawing samples, the complainant must have come across the signature of accused Dipakkumar. So, it was even possible for him to state positively whether the signature on the acknowledgment on exh.23 is the signature of the accused or not.

8. So far as finding recorded qua non-compliance of Rule 14 framed under the Act is concerned, the ld. Judge

has carefully considered the oral version of the complainant and when Panch has not supported and a peon who was assisting Food Inspector has also not been examined, sole version of the complainant, in absence of corroboration, normally should not be accepted. Of course, the requirement of corroboration in such cases is a rule of prudence, but when it was possible for the department to examine the peon who had assisted the Food Inspector in drawing sample of groundnut oil, sole evidence can be said to have been rightly appreciated. So, acquittal based on both these counts can not be said to be either perverse or contrary to evidence on record. On the contrary, this is a case of proper appreciation of facts available on record.

9. Mr. Modi, ld. counsel appearing for the respondent accused has cited two decisions which support the finding recorded by ld. Magistrate. In the first decision, the Division Bench of this Court while dealing with Criminal Appeal No.209/1979 in the decision dated 24.2.1981 has held that it is obligatory on the part of the prosecuting agency to serve the accused with a notice under Sec.13(2) of the PFA Act with report of Public Analyst and there should be a convincing evidence that notice is sent and it was accompanied with Public Analyst's report. The another decision on which Mr. Modi has rightly placed reliance is the decision of this Court (Coram: D.A.Mehta,J) given while disposing of Criminal Appeal No.882/1992 wherein ld. Judge has observed that evidence available on record was not satisfactory. Similar finding has been recorded by the ld. Magistrate in the present case. So, inadequacy of evidence has taken ld. Magistrate to record a finding of acquittal. I do not see any infirmity or illegality in the said finding. It is an accepted proposition of law that when the Court is dealing with appeal against an acquittal, the jurisdiction of the Court is very limited and in that background, I am not inclined to interfere with the finding recorded by the ld. Magistrate. Hence, appeal requires to be dismissed.

10. In the result, Criminal Appeal is hereby dismissed. The impugned judgment and order of acquittal dated 3.3.1999 passed by ld. Metropolitan Magistrate, Court No.8, Ahmedabad in Criminal Case No.20/97 whereby the ld. Magistrate has acquitted the respondent accused of the offence punishable under Section 7 R/w Section16(1)A(i) of the Prevention of Food Adulteration Act, 1954, is hereby confirmed. Respondent Accused is on bail. Hence, his bail-bonds stand cancelled.

[C.K. BUCH, J]

*rawal